



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 6, 2003

Mr. Loren B. Smith
Olsen & Olsen
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2003-1497

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177546.

The Friendswood Police Department (the "department"), which you represent, received a written request for eleven categories of information regarding a named police officer and certain department policies and procedures. You have submitted to this office four offense reports, the requested policies and procedures, and documents from the police officer's personnel file. You contend that the submitted information is excepted from required disclosure pursuant to sections 552.108, 552.117, and 552.130 of the Government Code.¹

You first contend that the police reports you submitted as Exhibit A are excepted from required public disclosure pursuant to section 552.108(a)(1) of the Government Code, which excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th

¹Because you do not contend that the remaining requested information is excepted from public disclosure, we assume the department has released those records to the requestor, to the extent they exist. If it has not, the department must release those records at this time. *See Gov't Code* §§ 552.301, .302.

Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You state that the four police reports pertain to pending criminal investigations. Based on your representation, we conclude that the department may withhold most of the information contained in the police reports pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). The department must therefore release these types of information, including a detailed description of the offense, regardless of whether the basic information is actually contained on the front page of an offense report, in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976).

You next contend that the policies and procedures you submitted as Exhibit B are excepted from required public disclosure pursuant to section 552.108(b)(1) of the Government Code, which excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 2002 WL 31026981 (Tex. App.--Austin, Sept. 12, 2002) (No. 03-02-00074-CV).

This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of

whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

After reviewing the materials you submitted to this office, we conclude that portions of these materials show on their face how the release of the information would interfere with law enforcement and thus come within the protection of section 552.108(b)(1). We have marked those documents accordingly. However, because you have not established that the remaining information submitted under Exhibit B is excepted from public disclosure under section 552.108(b)(1), and the remaining information does not, on its face, reveal how its disclosure would interfere with law-enforcement efforts, the department must release the remaining information in Exhibit B to the requestor.

Finally, you contend that portions of the documents you submitted under Exhibit C are excepted from required public disclosure. We first note that two of the records you submitted under Exhibit C contain criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC"), as well as from other law-enforcement agencies. The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F.² *See also United States Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989) (where individual's criminal history information is compiled or summarized by governmental entity, such information takes on character that implicates individual's right of privacy and must be withheld from public). We have marked the information accordingly.

Also contained in Exhibit C is a "Declaration of Psychological and Emotional Health." Section 1701.306 of the Occupations Code provides in part:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

²However, driving record information is not criminal history record information. Gov't Code § 411.082(2)(B).

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306 (emphasis added). Therefore, the document we have marked in Exhibit C is made confidential by section 1701.306 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

Exhibit C also contains information that must be withheld from the public pursuant to section 552.102(a) of the Government Code, which excepts from required public disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person’s *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref’d n.r.e.). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). The submitted documents include personal financial information that is protected from disclosure under common-law privacy. We have marked the information that the department must withhold pursuant to section 552.102 of the Government Code.

The department must also withhold pursuant to section 552.117(2) of the Government Code all information that relates to the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 670 (2001). Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). After reviewing the submitted records, we conclude that the department must withhold the information we have marked pursuant to section 552.117(2).

Finally, we address the applicability of section 552.130 of the Government Code. Section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold the police officer's Texas driver's license and Texas driver's license number pursuant to section 552.130(a)(1) of the Government Code.

In summary, the department may withhold the four offense reports you submitted as Exhibit A pursuant to section 552.108(a)(1), except for the "basic information," which must be released. The department may also withhold pursuant to section 552.108(b)(1) the information we have marked in Exhibit B. The criminal history information we have marked must be withheld in accordance with federal law, chapter 411 of the Government Code and *Reporters Committee*. The "Declaration of Psychological and Emotional Health" must be withheld in accordance with section 1701.306 of the Occupations Code. The department must withhold the information we have marked as coming within the protection of sections 552.102 and 552.117(2) of the Government Code. Finally, the police officer's Texas driver's license and driver's license number must be withheld pursuant to section 552.130(a)(1) of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

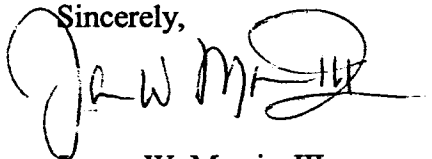
should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/seg

Ref: ID# 177546

Enc: Submitted documents

c: Mr. Dale Paschall
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(w/o enclosures)